Supreme Court, U.S.
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No. 97-136

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MARY JOY ANN GUSTILO and
JOSE VICENTE GUSTILO, III,
PETITIONERS

v.

NADINA (MARAVILLA) GUSTILO, Individually
and as Former Administratrix of
The Estate of Armando C. Gustilo, Deceased,
and as Guardian of June Salvacion (Maravilla)
Gustilo; JOSEPH S. HORRIGAN, as Guardian Ad Litem
and Attorney Ad Litem of June Salvacion Gustilo;
and the KANALY TRUST COMPANY, as Administrator
of the Estate of Armando C. Gustilo, Deceased,
RESPONDENTS

On Petition for Writ of Certiorari to the
Fourteenth Court of Appeals for the State of Texas

PETITIONERS' REPLY TO RESPONDENTS' BRIEFS IN OPPOSITION

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REPLY QUESTIONS FOR REVIEW

Whether, in suit involving only non-resident aliens, ultimate issues concerning foreign inheritance and foreign civil status present considerations of comity and conflicts of law which must be decided in conformity with United States foreign policies, international law, treaties and compacts as supreme **federal law**.

Whether parochial laws of individual states or judicial acts of state judges may override supreme **federal law** and comity principles to provide "adequate state ground" for denial of rights of alien litigants established under laws of their domiciles.

Whether violation of federal international obligations **or federal law** occurs when a domestic appellate court, upon no disclosed base greater than caprice, refuses to give credit and effect to controlling foreign statutes or discuss and distinguish squarely conflicting decisions of superior foreign courts in claims of alien litigant when doctrines of comity and *stare decisis* require a different outcome, and domestic law requires a full discussion of all material issues raised on appeal.

Whether **"denial of justice", as understood under international law**, or denial of due process under the Fourteenth Amendment, occurs when state appellate court, in respect to questions duly put before it, in appeal by alien litigants of decision in conflict with state and federal law, **refuses to consider, discuss or determine issues of controlling foreign law** or refuses to consider and distinguish directly-conflicting decisions of Texas Supreme Court or refuses to review cumulative prejudicial effect of trial court errors fairly raised below and argued on appeal.

Whether United States Supreme Court has jurisdiction and commitment under international law to issue writ of certiorari to correct highest state court in decision resulting in or which may result in denial of justice to citizen of cooperating nation.

LIST OF PARTIES

The parties to the proceeding below set forth in the caption are as follows:

1. Mary Joy Ann Gustilo

2. Jose Vicente Gustilo, III

3. Nadina Maravilla Gustilo

4. Joseph A. Horrigan

5. June Salvacion Gustilo

6. Kanaly Trust Company

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I. MISSTATEMENTS OF RESPONDENTS STATED OR ADOPTED

[Nadina (Maravilla) Gustilo's Response may be referred to as "Nadina Response" or "Nad. Resp.", and Response of June Salvacion (Maravilla) Gustilo may be referred to as "Horrigan Response" or "Horr. Resp.". Appellants' Brief and Appellants' Reply Brief in the Court of Appeals may be referred to as "App. Br." and "App. Rep. Br."]

1. Appendix I, Horrigan Response, **was not in Respondents' briefs nor in record on appeal** nor in files of Petitioners nor approved by Petitioners. **Respondent Horrigan is in error in disparaging Petitioners' references to partial summary judgment of June 1, 1992 as "misstatement".** Court below refused to set aside partial summary judgment, though urged to do so by Petitioners on ground that, if not set aside, no basis could exist for further summary judgment (Tr.2315-2322).

2. Respondent Horrigan incorrectly states that 1985 Philippine court order ("Veloso decision") to correct the child's [June Salvacion Maravilla's] birth certificate "was not appealed ... [and] ... was, therefore, a *final* judgment under any definition" (Horr.Resp.p.4). The 1985 order has been in Philippine appellate courts throughout most of these proceedings (App.Br. p.30 and Tr.2324, Append. 1 herein, p.A-1). While in the Philippine Supreme Court, the appeal has been the subject of Petitioners' request for delay filed in Texas Supreme Court to permit decision by Philippine Supreme Court (Motion for Extension of Time, filed 9-10-96,pp.4-5). The appeal continues.

3. Respondent Horrigan incorrectly states that Petitioners' claim that 1985 order in *Nadina G. Maravilla v. Local Civil Registrar* was rendered *ex parte* is "factually inaccurate" (Horr. Resp.p.5). Judge Veloso expressly found: "On motion of counsel for the petitioner [Nadina Maravilla], he was allowed to present evidence ex-parte" (see Tr.1116, Order dated 1-7-85, Append.2 herein, p.A-2), as stated by Petitioners, viz: Decision was made "in an ex parte proceeding seven years after her birth" (Petition for Writ of Certiorari, p.14 [hereafter "Pet. for Cert."]). The record shows failure of *personal* service upon

Maravilla and Gustilo and no actual appearance of either *after* being joined as a party (see Plaintiffs' trial exhibit P73, 31st page [Sheriff's Return re: Maravilla], also at Tr.2123, Append.3 herein, p.A-3; Exh.P73, 23rd page [Officers Return re: Gustilo and Maravilla], also at Tr.2103, Append.3 herein,p.A-4,5). If served, each defaulted making a response. No adverse person was personally noticed or present in court to summon and examine Maravilla or to show the total and obvious discrepancy between Maravilla's signature upon his marriage license before 10 witnesses (Exh.P73, 17th pg.; also at Tr.2297), and his purported, unattested signature of conformity upon Nadina's first, but superseded, pleading (Exh.P73, 7th pg.; also at Tr.2302), filed 3-17-83, wherein **she swore she was married to Maravilla seven months after her bigamous marriage to Gustilo** (repeated in amended pleading). There is no **proof** of any kind that Gustilo filed a "Constancia" or was aware of the proceedings.[1] The child had no representative present. The matter was decided *ex parte* in the purest sense.

4. Respondent Horrigan flatly states that Petitioners "never contended in the Texas courts that the Philippine trial court lacked jurisdiction when it issued its 1985 order" (Horr.Resp. p.5). Curiously, Horrigan never asserted the order had binding effects[2]. However, his statement is palpably **false**. Petitioners repeatedly asserted that Philippine court lacked jurisdiction (App. Br.pp.25,26; App.Rep.Br.pp.28, 29; and App. Mot. for Rehearing, Court of Appeals:pp.19-22, 24, 27 para.5 [see Append.4 herein, p.A-6], 29 para.4, 30 and 33 [see Append.4, p.A-6];

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[1] Do Respondents claim Gustilo was notified and agreed with Nadina's sworn petition stating that she was still married to Maravilla?

[2] Contrary to Horrigan's assertion (Horr.Resp.p.5 lines 18-19), June Salvacion never mentioned the 1985 order in her initial or amended pleadings below (App.Rep.Br.p.39) nor asserted it as an affirmative defense or as "res judicata". She is now barred from doing so. The order was mentioned **as a source of evidence** or element of attempted proof in her summary judgment motions, **but never in supporting pleadings**.

also Mot. for Rehearing En Banc pp.20,23). June Salvacion and Maravilla are shown to be indispensable as **moving parties** (see para.5, *infra*). Petitioners summarized: Recognition of "... claimed rights of June Salvacion **not having been established by a court invested with jurisdiction and authority** sufficient for such purpose under controlling Philippine law, constituted a denial of due process and also simple, reversible error" (App. Mot. for Rehearing, Court of Appeals, p.33).

5. Respondent Horrigan further states: "Nowhere in the Texas courts did the Petitioners contend that the Philippine court had no jurisdiction over" Nadina, her husband Maravilla, and proposed father, Gustilo, or lacked subject matter jurisdiction (Horr.Resp.p.6). However, Petitioners pointed out that affected person, June Salvacion, was indispensable party. (*Republic v. Marcos*, 182 SCRA 223 (1990), Append.5 herein, p.A-7)[3]. Only Maravilla could bring an action questioning legitimacy of June Salvacion (App.Br.p.25, Append.6 herein, p.A-10)[4]. Petitioner argued strenuously below (*id.*) that Maravilla did not bring suit or become plaintiff as indispensable element of jurisdiction. Nadina was not permitted under Philippine law to bring either a change of name or impugnation suit (*id.*), especially without presence of her daughter as a party.

Unverified "Constancia", filed by an undisclosed person, unproved as summary judgment evidence, gave Gustilo no connection with case. It was never shown to have competency under §§ 13.21 and 13.22 (now § 160.202) Texas Family Code, V.T.C.A. (App.Br.pp.29-30) or under Philippine law[5] (App.Rep.Br.p.5, esp.FN8; Append.7 herein, p.A-12).

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[3] This case was not cited below, but June Salvacion was stated to be an indispensable party.

[4] Esp. see commentator's notes re: Article 170, Philippine Family Code (The Family Code of the Philippines Explained, Vol. 2, Lizaso, 1990, p.53) (Appendix L, Pet. for Cert., p.A-53).

[5] The Family Code of the Philippines Explained, *supra*, at p.57; also Act No. 3753 Sec. 5, 9).

Three cases decided by the Philippine Supreme Court were cited numerous times below, in all courts, for express purpose of showing that Philippine court lacked subject matter jurisdiction [See *Ty Kong v. Republic of the Philippines*, 94 Philippine Reports 321 (1954); *Republic v. Bartolome*, Vol. 138 SCRA 442 (1985); and *V.D.A. DeCastro v. Republic*, Vol. 134 SCRA 14 (1985). These cases are attached to Pet. for Cert. as Appendices N (p.A-55), O (p.A-58), and P (p.A-63). **The action as brought did not give court power to determine filiation or heirship** (see *Republic v. Marcos*, Append.5 herein, p.A-7).

6. Horrigan falsely states that no objection was made to jury issues and findings (Horr.Resp.p.9). Plaintiffs' Amended Motion for Judgment concerns itself *in extenso* on such matter (Tr.2287-2290, Append.8 herein, p.A-13), as does Petitioners' exceptions to charge and Motion for New Trial. Each recites related trial objections and motions and points out that **issues were barred by Philippine law and court decision**. See App. Br. below: Fourth Point and Sixth Point (esp. subpoints k, l, m and n).

7. Nadina states that trial court did not deny Petitioners' requested finding that Nadina obtained annulment of Maravilla marriage on 3-12-85 (see S.F.389-395, Append.9 herein, p.A-16 - A-17), and Court of Appeals found that Petitioners did not attack Nadina's prima facie case. This simply ignores the record showing **Nadina's incompetence to marry, as a matter of law** (see Append.10 herein: Tr.2262-2270 [at p.A-18], App.Br., First Point: b, c, d, e, f [p.A-22], and excerpt from Amended Motion for Rehearing filed in Texas Supreme Court [p.A-24]; also see Petitioners' requested instructions below).[6]

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[6] Motion for special instruction denied S.F.1526; motion for instructed verdict (S.F.1545-1550, denied S.F.1557); Motion in Limine (Tr.2012); motion for instructed finding of 12-24-70 Maravilla marriage and annulment 3-12-85 (S.F.395 [Append.9 herein p.A-16]); objection to issue on marriage (S.F. 1704 [Append.11 herein, p.A-26] and S.F.1632 [Append.11 herein, p.A-26]); First Amended Mot. for Judgment (Tr.2262); Mot. for New Trial (Tr.2476).

II. STATEMENT OF CASE

> "But, at virtually every stage ... Petitioners have been seriously affected ... by parting blows from Respondents containing representations which, Petitioners believe, a candid court should consider to have been either directly false or to have been utilized and packaged in such a way as to drive home a false message".

The quotation is from page 7 of Petitioner's Surrejoinder, filed in Texas Supreme Court on 3-26-97. Attempted correction of misstatements consumed important briefing space in all courts below and here. Respondents' false representations have resulted in a virtually impenetrable circle, whereby appellate court adopts Respondents' false representations without correction. The opinion is then cited as authority for originally-false representations. Requested rehearing for clarification of an obviously factually incorrect opinion is refused. Petitioners find their appeal totally distorted. They appeal to the record to support this petition and the below arguments and corrections.

III. FEDERAL QUESTIONS

A. The Agreements

On February 5, 1978, long prior to Nadina's probate proceeding in Texas (not "meanwhile", as urged Nadina Resp. p.2), Mary Joy, acting through her guardian, initiated probate proceedings in the Philippines (Appendix I to Pet. for Cert. at p.A45). The term "meanwhile" utilized by Court of Appeals at beginning of third paragraph of opinion is misconception.

Append.12 herein (p.A-27), a statutory application for Declaration of Heirship filed by Dr. Gerardo Gustilo on 4-12-91 naming these Petitioners as heirs, **initiated this lawsuit**. Both Respondents, without references to record, have driven courts in this appeal to believe Petitioners filed this suit as "plaintiffs" in 1991 seeking to set aside settlement agreements and affirmative relief (see Opinion attached to Pet. for Cert. at pp.A-6, A-7, and A-23, esp.FN6). **The record reflects instead that Petitioners initiated their probate action in the Philippines** and faithfully and successfully pursued Philippine remedies and that **Nadina**

placed the Philippine agreements in issue for the first time in Texas on 1-23-92 (Tr.207), and ninety days later Petitioners filed Second Amended Response and Joinder (Tr.662-688). Petitioners asserted primacy of Philippine law in Texas suit and insisted upon comity (Appendix X to Pet. for Cert., p.A-91). Trial court simply concluded: "I will deny comity to the Philippine decisions" (*id.* p.A-92)--**a denial of federally-protected right**.

On May 10, 1994, Respondents jointly (and falsely[7]) informed the Fourteenth Court of Appeals, viz:

> "The decision of the Philippine courts are not final and conclusive and are in fact being appealed on the grounds of severability of the agreements and the waiver, renunciation, repudiation and assignment of interest clauses of the agreements." (Joint Motion to Strike Appellants' Notice of Foreign Judgments, p.8).

But all claims and equities of Respondents had been finally and emphatically denied "for lack of merit" by Philippine Supreme Court (see FN7). **Under federal policies of comity, further claims of Respondents were barred** under authority of *Arsenol v. Intermediate Appellate Court*, 1986 Phil. Sup. Ct., Lexus 2709 (7-14-86) (Appendix F to Pet.for Cert., p.A-33; see also Pet.forCert. pp.9, 10) and Article 1409, Civ. Cd. of Phil. Ann., Paras, Ninth Ed., 1978 (Appendix Y to Pet. for Cert, p.A-93). Yet these prohibited claims, now reasserted for the fifth time by Horrigan (Horr.Resp.pp.8, 9), were retried in probate court over objection (Appendix X to Pet. for Cert., pp.A-91-93).

B. Spousal Status, Nadina

Collateral effects given by Opinion below to appealed, *ex parte*, 1985 Veloso decision purportedly declaring June Salvacion's illegitimacy, are in sharp and constitutionally

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[7] Respondents' representations were false. The Philippine court ruled against these claims finally on 3-23-94, some 40 days previously, and had emphasized in bold type that its decision was "***FINAL***" [court's emphasis] and was "for lack of merit" [our emphasis]. See Append.13 herein, p.A-33.

impermissible contrast to that same court's denial of preclusive effects to 7th Court of Appeals' decision, confirmed by Philippine Supreme Court after adversarial trial participated in by all parties. But these effects given Veloso decision as favoring June Salvacion's claimed filiation are in even less explainable contrast to Texas court's rejection of finding in same decision that Nadina was married to Francisco Maravilla, supported by her oath to this fact before Judge Veloso (see Append.10 herein, p.A-21 and see page 4, paragraph 7, *supra*). A finding of marriage to Maravilla was mandated under Texas law[8]. Selective resort to Veloso findings, rejection of 7th Court of Appeals findings, and refusal to find that Nadina was bound by her testimonial declarations here and in the Philippines (Appendix Z to Pet. for Cert. at p.A-94 - A-99) **violated federal principles of comity, Law of Nations, and supreme federal and constitutional law (Fourteenth Amendment and Article VI, Section 2)**. Nadina was shown to be incompetent to marry Gustilo and could not make a prima facie case under Philippine or Texas law.

C. **Filiation of June Salvacion**

Presumed filiation of June Salvacion was fixed under Article 263, Philippine Civil Code and Article 170, Philippine Family Code[9] (see Pet. for Cert., Appendices K [p.A-52] and L [p.A-53]). Lizaso states (referring to statutory one-year period provided for bringing action to contest presumed filiation), viz:

> "Once these periods expire, no action may be entertained anymore by the Court. **Thereby, the status of the child as presumed by law shall become fixed.**

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[8] *Long v. Knox*, 291 S.W.2d 292 (Tex.1956); *Moore v. Neff*, 629 S.W.2d 827 (Tex.App.–Houston [14th Dist.] 1982, writ ref'd n.r.e.); *Cameron County v. Velasquez*, 668 S.W.2d 776 (Tex.App.–Corpus Christi 1984, writ ref'd, n.r.e.); *Huckin v. Connor*, 928 S.W.2d 180 (Tex.App.–Houston [14th Dist.] 1996, reh'd overruled); *Welder v. Welder*, 794 S.W.2d 420, 431 (Tex.App.–Corpus Christi 1990; *Mendosa v. Fidelity & Guar. Ins. Underwriters, Inc.*, 606 S.W.2d 692 at p.694 (Tex.1980).

[9] Civil Code of the Philippines Annotated, Paras, Ninth Edition, 1978; The Family Code of the Philippines Explained, Lizaso, Vol.2, 1990 Ed. (textual matter and illustrative cases).

> **The status then can no longer be questioned in any other case, or in any other forum. ... [S]aid issue may no longer be inquired into, even by way of defense or in a collateral issue in another action for a different purpose"** (*The Family Code of the Philippines Explained*, Lizaso, Vol. Two p.54).

A fortiori, an action brought by mother (who is not permitted to bring action questioning legitimacy of her child) to correct the public register (begun seven years after birth registration, in which action neither presumed father nor proposed father are shown--even imperfectly--to have appeared after having been joined, and minor child was unrepresented) must certainly be ineffective upon its face to alter filiation, a result not even petitioned for (see *Republic v. Bartolome, id.*; *V.D.A. DeCastro v. Republic, id.*; and *Ty Kong v. Republic of the Philippines, id.*). To deny applicability of Philippine law in the analysis of Veloso decision and June Salvacion's claims is **to deny basic rudiments of comity rights** of Petitioners which Chief Justice Taney states is a concern of this court and **an incident of federal law** in *Bank of Augusta v. Earle* at p. 536 (13 Peters 519, 536; 10 L.Ed. 274, 288 [Sup. Ct. 1859]).

IV. CRITICAL ISSUES NOT CONTESTED BY RESPONSES

Neither Horrigan nor Nadina deny that settlement agreements are determined to be void under Philippine law or that Philippine law applies to Philippine agreements; neither deny that Petitioners are aliens and Philippine citizens. Neither has offered evidence that Nadina had sexual contact with Gustilo during any relevant time, or **conclusive** evidence--or even substantial evidence--that sexual contact with Maravilla was impossible.[10]

No party to this appeal has ever denied that Nadina's marriage to Maravilla was annulled by her on March 12, 1985, and the trial court acknowledged this, and Nadina swore to it.

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[10] Nadina's affidavit and testimony affirmatively reflect the possibility of sexual contact. She was "with my husband" (S.F. Pretrial hearing on motions on 6-17-91, pp.108-109; also Tr.1395-1396).

Neither Horrigan nor Nadina has responded effectively to Petitioner's Point C insofar as it relates to duty of the Court of Appeals to apply and discuss foreign law in determination of matters of Philippine succession and status such as filiation, impugnation (of legitimacy) and foreign marriage.

Horrigan suggests that the portion of Point C relating to Court of Appeals' refusal to have discussed Appellants' Sixth Point below presents no question because of the existence of adequate state grounds. But this court, in a closely-analogous case, held: "consideration of asserted constitutional rights may not be thwarted by the simple recitation that there has not been observance of a (state law) procedural rule with which there has been compliance in both substance and form, in every real sense."[11] The Sixth Point concerns serious abuse by the trial court by which these Philippine nationals have been denied access to a fair and impartial court of justice (*id.*).

V. JURISDICTION

Error implicating federal law is apparent on the face of the record, and it implicates mandatory federal jurisdiction under Article VI, Section 2[12] of the Constitution and under International law and treaties and compacts (Pet. for Cert. pp.20-23).

The Congress was required "to vest the whole judicial power of the United States"[13], as mandated by Article III, Section 2 of the Congress, in the Supreme Court in respect to "all cases" (U.S. Constitution, *id.*) arising under that power "to the utmost constitutional extent". This power and jurisdiction "... should be commensurate with mischiefs intended to be remedied, and, of course, should extend to all cases whatsoever" (*Martin v. Hunter's Lessee*, *id.* at p.335), which may arise under federal

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[11] Quote is from *NAACP v. Alabama*, (1964) 377 US 288, 12 L.Ed. 2d 325, 84 S.Ct. 1302, at 12 L.Ed. page 332.

[12] Protection under Art. VI, Section 2 is omni-present and never requires pleading or proof beyond proof of circumstances falling under its protective umbrella [Restatement (Third) Foreign Relations Law of the United States § 13 comment a., p.61].

[13] *Martin v. Hunters Lessee*, 14 U.S. 304 (1816) at 330.

law and the Constitution. This clearly applies to cases "in which principles of the law and [of] comity of nations ... form an essential inquiry. All these cases ... enter into the national policy, affect the national rights, and may compromit the national sovereignty." (*Id.*) "It [the appellate jurisdiction of the U.S. Supreme Court] is, therefore, capable of embracing every case enumerated in the constitution, which is not exclusively to be decided by way of original jurisdiction" (*id.* at 337-38).

Petitioners have shown the court with certainty that rights assured to them under treaty, international law and comity are matters of federal concern (Pet. for Cert. pp.16, 20-23) and that these rights were asserted under foreign law and under international and federal concepts of comity (*id.* pp.7-16, 24-27) and under Art. VI, Sec. 2 of the U.S. Const. and treaties and compacts joined in and assented to by the U.S. (*id.* pp.20-23,27-30). They have shown they were denied access to mandatory adjudicatory functions of state courts (*id.* pp.12-16, 24-27) resulting in denial of justice under international law and under the 14th Amendment. The U.S. has joined other nations in treaties and compacts, giving assurance that its national courts would provide redress to aliens in such circumstances (*id.*, pp.20-23, 28-30).

CONCLUSION

These Petitioners have been divested of their Philippine titles without a showing in the record that Philippine law, though duly presented, has been consulted, discerned and declared on any issue controlled by it. They have been denied due trial and due appeal. Furthermore, Texas courts have installed two unwelcome members into the Gustilo family against express Philippine law and policies. The national conscience demands redress.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three true and correct copies of the foregoing Reply Brief were sent by certified mail on September 23rd, 1997, to each of the following counsel of record:

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APPENDICES:

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APPENDIX 1
(Tr. 2324)

REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
MANILA

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that a petition for Annulment of Judgment entitled "JOSE GUSTILO III, VS. HON. JUDGE, RTC OF MAKATI, M.M., AND THE LOCAL REGISTRAR OF MAKATI, M.M.", was filed with this Court and DOCKETED CA-G.R. SP-No. 30760 today, April 20, 1993.

This certification is being issued upon the request of Atty. Leon Moya, Jr., counsel for the petitioner.

April 20, 1993.

TESSIE L. GATMAITAN
Clerk of Court

G.R. Nos. 4992274, 2337336
Date: April 20, 1993

APPENDIX 2
(Tr. 1116-1117 - "Veloso Decision")

Republic of the Philippines
REGIONAL TRIAL COURT
National Capital Judicial Region
BRANCH CXXXIII (133)
Makati, Metro Manila

NADINA G. MARAVILLA,
Petitioner,

-versus- SP.PROC.NO.M-130

LOCAL CIVIL REGISTRAR OF
MAKATI, METRO MANILA,
Respondent.
x - - - - - - - - - - - - - - x

O R D E R

Petitioner Nadina G. Maravilla filed this petition aimed at seeking the correction of entries on the certificate of birth of her daughter June Salvacion G. Maravilla.

The jurisdiction of the court having been established with the publication of the amended petition (Exhs. "G", "G-1" to "G-3"), and with proper notice to the Office of the Solicitor General, the Local Civil Registrar of Makati, Metro Manila, as well as respondents Francisco J. Maravilla and Armando C. Gustilo, this case was heard on December 6, 1984. During the hearing, nobody appeared to oppose the instant petition. Further, respondents Francisco Maravilla and Armando C. Gustilo have filed their written conformity to this petition (Exhs. "E", "F" and "D"). On motion of counsel for the petitioner, he was allowed to present evidence ex-parte.

. . .

(Text Omitted)

APPENDIX 3
(Tr. 2123 - Sheriff's Return
Tr. 2103 - Officers Return)

REPUBLIC OF THE PHILIPPINES
OFFICE OF THE JUDICIAL SHERIFF
NATIONAL CAPITAL JUDICIAL REGION
Makati, Metro Manila

NADINA G. MARAVILLA,
Petitioner,
-versus- SP. PROC. NO. M-130
THE LOCAL CIVIL REGISTRAR
OF MAKATI, METRO MANILA, ET AL.,
Defendants.
x - - - - - - - - - - - - - - - - - - x

SHERIFF'S RETURN

Diligent efforts were exerted by the undersigned to serve the attached summons together with the corresponding complaint issued by the Honorable Court in connection with the above-entitled case, but the cited defendant was always out of the said place (No. 4 J.C. Locsin St., BF Homes, Quezon City).

On November 6, 1983, undersigned undertook a substituted service, summons and the attached complaint (petition), was tendered to Mr. ALFONSO MARAVILLA, cousin of the defendant, a person of suitable age and discretion who is living in the said address, as evidenced by his signature on the copy of the attached summons and assured that these will be immediately forwarded to FRANCISCO J. MARAVILLA.

D U L Y S E R V E D.

Makati, Metro Manila, November 7, 1983.

ANTONIO JM. BAUTIETA
Deputy Sheriff

NADINA G. MARAVILLA,
Petitioner,
-versus- SP. PROC. NO. M-130
THE LOCAL CIVIL REGISTRAR
OF MAKATI, METRO MANILA,
FRANCISCO J. MARAVILLA
and ARMANDO GUSTILO,
Respondents.
x - - - - - - - - - - - - - - - - - x

OFFICERS RETURN

This is to certify that I have served copies of the herein attached ORDER, issued by the court in the above entitled petition, upon the following persons to wit :

1. Local Civil Registrar of Makati, Metro Manila — (September 27, 1983, thru Benito Samson, Chief, of said office, who acknowledged receipt hereof.

2. Armando C. Gustilo — (September 27, 1983, thru Vicky Amor, employee/secretary, at the office of the National Federation of Sugarcane Planters, 7th floor, Kalayaan bldg, Salcedo St. Makati, as evidence by her acknowledgement that appears of the right upper portion of the duplicate copy of said Order, dated September 22, 1983.

3. Solicitor General Office — (September 28, 1983, thru M. Escarda, receiving clerk of said office. who acknowledged receipt hereof, as evidenced by his acknowledgment that appears on the left upper portion

of the duplicate of said Order, dated September 22, 1983.

4. Francisco J. Maravilla — (October 3, 1983, served, thru Miss Shirely Vicente, domestic caretaker but refused to acknowledged or sign for an in behalf of Francisco J. Maravilla Jr., at No. 4 J. U. Locsin St. BF Homes Q. C.

MAKATI, METRO MANILA, OCTOBER 3, 1983.

FOR THE EX-OFFICIO SHERIFF:
By:

THE CLERK OF COURT
RTC, Branch 133
Makati, Metro Manila

Francisco P. Barnardino
Process Server

copy furnished:

counsel for the Petitioner.

APPENDIX 4

(Motion for Rehearing in Court of Appeals, p. 27, para 5)

5. The Supreme Court of the Philippines twice made generic determinations that any trial court, on pleadings to correct the record of a certificate of birth, was without jurisdiction or power to adjudicate filiation or heirship. *Republic v. Bartolome, supra*, and *V.D.A. DeCastro v. Republic, supra*. No decision by the Philippine Supreme Court **permitting the impugnation of legitimacy** by means of "correcting the registry" has been found.

(Motion for Rehearing in Court of Appeals, excerpt from p. 33)

(The order does not have sufficient summary judgment findings even if the findings were admissible. Neither impossibility of access under Philippine law nor evidence of insemination by Gustilo are supported by found facts.) *[Petitioners' Note: Parenthesis is in motion.]* The underlying error of the trial court and the error of the panel in denying a portion of the inheritance rights of Appellants and creating opposing inheritance rights of June Salvacion without notice and opportunity to have been heard, such claimed rights of June Salvacion not having established by a court invested with jurisdiction and authority sufficient for such purpose under controlling Philippine law constituted a denial of due process and also simple, reversible error. The error was fundamental, prejudicial and of such a nature as to require correction and demand reversal and rendition.

APPENDIX 5
(*Republic v. Marcos*, 182 SCRA 223 [1990])

THE SUPREME COURT OF THE PHILIPPINES
(FIRST DIVISION)

REPUBLIC OF THE PHILIPPINES, petitioner, *vs.* HON. PIO R. MARCOS, Judge of the Court of First Instance of Baguio and Benguet and PANG CHA QUEN representing the minor, MAY SIA alias MANMAN HUANG, respondents.

. . .

(Text Omitted)

PETITION for certiorari to review the order of the then Court of First Instance of Baguio and Benguet, Br. I. Marcos, J.

The facts are stated in the opinion of the Court.

Sinforoso Fangonil for private respondent.

GRINO-AQUINO, *J.:*

This is a petition for review of the order dated February 12, 1969 of respondent Judge Pio R. Marcos of the then Court of First Instance, now Regional Trial Court of Baguio and Benguet, granting the petition for change of name under Rule 103 of the rules of Court and authorizing "the name of the minor child May Sia alias Manman Huang, also known as Mary Pang [to] be changed to Mary Pang De la Cruz" (p. 12, Rollo).

On March 30, 1968, a verified petition was filed by private respondent Pang Cha Quen alleging that she is a citizen of Nationalist China, married to Alfredo De la Cruz, a Filipino citizen; that she had resided in Beguio City since her birth on January 29, 1930; that by a previous marriage to Sia Bian alias Huang Tzeh Lik, a citizen of Nationalist China, she gave birth to a daughter, May Sia alias Manman Huang on January 28, 1958 in the City of Manila; that on January 12, 1959, she caused her daughter to be registered as an alien under the name of Mary Pang, i.e., using the maternal surname, because the child's father had abandoned them; that her daughter has always used the name Mary Pang at home and in the Baguio Chinese Patriotic School where she studies; that on August 16, 1966,

petitioner Pang Cha Quen married Alfredo De la Cruz; that as her daughter has grown to love and recognize her stepfather, Alfredo De la Cruz, as her other father, she desires to adopt and use his surname "De la Cruz" in addition to her name "Mary Pang" so that her full name shall be Mary Pang De la Cruz; that Alfredo De la Cruz gave his conformity to the petition by signing at the bottom of the pleading . . ..

On April 4, 1968, respondent Judge issued an order setting the hearing of the petition on September 16, 1968 at 9:00 o'clock in the morning and inviting all interested persons to appear and show cause, if any, why the petition should not be granted. The order also directed that it be published at the expense of petitioner in the *Baguio and Midland Courier*, a newspaper of general circulation in Baguio City and Mountain Province, once a week for three (3) consecutive weeks, the first publication to be made as soon as possible. The order also commanded that the Solicitor General and the City Attorney of Gaguio be furnished copies of the order and petition.

On September 16, 1968, when the petition was called for hearing, nobody opposed it. Upon motion of petitioner's counsel, respondent Judge authorized the Clerk of Court or his deputy to receive the evidence of the petitioner, Pang Cha Quen.

Finding the petition meritorious, respondent Judge issued an order on February 12, 1969 authorizing the name of the minor, May Sia alias Manman Huang, also known as Mary Pang, to be changed to Mary Pang De la Cruz.

. . .

(Text omitted)

In its petition for review, the Government raised two *(2) issues namely: (1) whether or not respondent Judge had acquired jurisdiction over the case; and (2) whether respondent Judge erred in granting the petition although private respondent Pang Cha Quen failed to adduce proper and reasonable cause for changing the name of the minor "May Sia" alias "Manman Huang."

. . .

(Text omitted)

. . . The general rule is that a change of name should not be permitted if it will give a false impression of family relationship to another where none actually exists (Laperal vs. Republic, L-18008, October 30, 1962; Johnson vs. Republic, L-18284, April 30, 1963; Moore vs. Republic, L-18407, June 26, 1963.). In *Padilla vs. Republic*, 113 SCRA 789, we specifically held that our laws do not authorize legitimate children to adopt the surname of a person not their father, for to allow them to adopt the surname of their mother's husband, who is not their father, can result in confusion of their paternity.

Another reason for disallowing the petition for change of name is that it was not filed by the proper party.

. . .

(Text omitted)

Clearly, the petition for change of name must be filed by the person desiring to change his/her name, even if it may be signed and verified by some other person in his behalf. In this case, however, the petition was filed by Pang Cha Quen not by May Sia.

Hence, only May Sia herself, alias Manman Huang, alias Mary Pang, when she shall have reached the age of majority, may file the petition to change her name. The decision to change her name, the reason for the change, and the choice of a new name and surname shall be hers alone to make. It must be her personal decision. No one else may make it for her. The reason is obvious. When she grows up to adulthood, she may not want to use her stepfather's surname, nor any of the aliases chosen or her by her mother. ...

. . .

(Text omitted)

WHEREFORE, the petition for certiorari is granted, and the order appealed from is hereby reversed and set aside.

[Petitioners' Note: Other grounds included insufficiency of reasons to change name and failure to publish all aliases]

APPENDIX 6
(Appellants Brief in Court of Appeals
Excerpt from pg. 25)

There is no evidence that Francisco Maravilla, Jr. or any other person brought an action to impugn the legitimacy of June Salvacion at any time before her status as the child of such marriage became fixed under Philippine law. See Article 170 of the new Family Code of the Philippines and Article 263 of the Philippine Civil Code, which immediately preceded the new code. Mr. Horrigan refers to these articles as providing a statute of limitations. That is a large understatement. What they do is fix the status o the child irrevocably for purposes which are stated to be both public and important. Under comments regarding Article 170 in the Family Code of the Philippines this is explained in Volume 2, page 5 viz:

"Who May Impugn the Legitimacy of the Child

"It is submitted that only the husband, and in a proper case his heirs, can assail the legitimacy of a child. This is so because the husband is the one directly confronted with the scandal and ridicule brought about by the infidelity of his wife. He should be the one to decide whether to conceal the infidelity or expose it, in view of the moral implications and economic interests involved.

"But the action can be exercised only within a fixed time and only in a direct suit brought for the purpose (Macadangdang v. CA, 100 SCRA 73, 1980)."

In pertinent part, Article 263 of the Civil Code of the Philippines and Article 170 of the new Family Code of the Philippines, which succeeds it, also provide as follows:

"The action to impugn the legitimacy of the child shall be brought within one year from the record of the birth in the Civil Register."

On page 54 of the Family Code, a material comment referring to the time limitations for the bringing of an action to impugn the legitimacy of a child gives further clarification as follows:

> "Once these periods expire, no action may be entertained anymore by the court. Thereby, the status of the child as presumed by the law, shall become fixed. The status then can no longer be questioned in any other case or in any other forum."

Thus, the child acquires a status protected from any whim of a parent or other person seeking to disturb it. The affidavits of Francisco and Nadina Maravilla are incompetent to affect the true status of the child.

APPENDIX 7
(Appellants Reply Brief in Court of Appeals, pg.5, esp. FN.8)

iv) **Conclusory Constancia neither admissible nor conclusive.** The Constancia, which was relied upon by the Philippine and Texas courts, was not in compliance with either Section 13.21-22 of the Texas Family Code (§13.21-22 Texas Family Code, V.T.C.A.) (which has content and verification requirements not met) or the Philippine parallel law (Act No. 3753 Sec. 9); also see Philippine Family Code Art. 172 cited by Appellee to the trial court[8], which requires verification. Nor did the Constancia contain admissible averments of controlling facts regarding sexual contact by Gustilo or regarding impossibility of access by Maravilla. The Constancia was not admissible or conclusive on the issue of the filiation of June Salvacion; **for she had a presumed father.** June Salvacion met none of the Philippine Civil Code provisions of Art. 269 for legitimization (Article 177 New Family Code). Therefore, even recognition, had it been established, was impugned and contested by Jovi and by Mary Joy. See Article 286 of the Philippine Code so expressly permitting.

---

[8] The Family Code of the Philippines Explained, Lizaso, at page 57, makes this comment as to requirements for a public document under Article 172 cited by June Salvacion providing recognition of a legitimate child, viz: "**Public Document**. This is a document duly acknowledged before a notary public . . .." But see argument of Appellee at page 55 of the Statement of Facts, Pretrial Motions, April 5, 1993, asserting June Salvacion's complete satisfaction of Philippine law requirements under this Article. Other authority stresses that the document must be authentic and not a forgery and certainly not an un-proved private paper.

APPENDIX 8
(Excerpts from Tr. 2287-2290: First Amended Motion for Judgment for Jose Vicente Gustilo, III, and Mary Joy Ann Gustilo)

37. The six jury questions just enumerated [3, 4, 7, 8, 11 and 12] as well as Jury Questions No. 9 and 10, 15 and 16, 1 and 2, and 5, and 6, also fall for another reason. Each of such Jury Questions No. 1, 2, 3, 4, 7, 8, 11, 12, 9, and 10, and 15 and 16 and 5 and 6, relates to one or the other of two settlement agreements. Nadina Gustilo and June Salvacion relied upon a preliminary approval of those settlement agreements by the Probate Court in the Philippines. However, the Court of Appeals for the Republic of the Philippines, Seventh Division, Manila, determined that the approval of the Probate Court in the Philippines was in error and its Order as well as the agreements themselves were determined to be void ab initio, and Nadina Gustilo was ordered removed as administratrix of the Philippine Estate. The immediate effect of this in Texas was to remove all color of attempted compliance, if any, with Article 352 of the Texas Probate Code which is an unambiguous proscription against the personal representative becoming a purchaser directly or indirectly of any property of the estate. The Court is directed by statute as follows: "... such a sale shall be by the Court declared void, and shall be set aside by the Court ...". Such question was raised by Motion for Judgment or directed verdict at the close of all pleadings and at the close of evidence and by instructions upon which such issues if permitted should be conditional. But these were denied.

38. However one may attempt to cast the activity of Nadina Gustilo in entering into transactions by which she purported to obtain the right and title to properties and bank deposits in the United States and in Texas, such an activity would have required the approval of the Texas Probate Court whether under the Article just mentioned or other provisions of the Texas Probate Code. By seeking to avoid the claims of jose Vicente Gustilo, III, and Milagros Barco acting as the Guardian of Mary Joy Ann Gustilo, through the interposition of the alleged agreements and

matters arising out of the same or collateral thereto it became the burden of proponents of the agreements to establish the same as enforceable legal agreements.

39. They cannot even plead the Agreements without also facially showing their illegality now that any approval given them by the Philippine Court is reversed. They are void here and void there. Movants contend that the administratrix failed to comply with provisions of the Texas Probate Code as well as her obligations as a fiduciary under common law. Movants requested an instructed verdict for the reason that it was clear and beyond dispute that Nadina Gustilo, for herself and for her daughter, June Salvacion Gustilo, did not meet even minimal requirements of the Texas Probate Code in the transactions they assert to be their affirmative defenses. Now it is clear by the decision of the Appeals Court in the Philippines that Nadina Gustilo also did not meet the minimal provisions of the Philippine law in respect to such settlement agreements either. They have been determined to be void ab initio. For all of such reasons Jury Questions No. 3, 4, 7, 8, 11, 12, 9, and 10, and 15 and 16, 1 and 2, and 5 and 6, are all irrelevant and must be disregarded by the court in these proceedings.

40. A further objection exists in respect to Jury Questions 9 and 10. The questions were answered in the light of an overwhelming amount of totally inadmissible evidence. Mr. Horrigan took opportunity to argue to the jury not only the inadmissible evidence but the withdrawn and therefore doubly inadmissible conclusions reached by Mr. Ray, his expert witness. Mr. Ray's concluding testimony was that he could not offer an opinion about the fairness of the settlement agreements as of the dates upon which they were made. His previous testimony about fairness was based entirely upon what he considered to be the present - ie current, today, - tax consequences attending the estate, some seven years after the agreements were entered into. He completely established his past total unfamiliarity with the Philippine Tax code which he has never seen - even to date - nor did he have previous experience with even one Philippine client. His total experience regarding estate taxation of foreign domiciliaries was confined to one experience with a Mexican national.

His conclusions about whether the agreements would or would not be fair today in the light of the large tax burden he believed would be brought up against such interests is irrelevant but also highly prejudicial and can have no bearing upon whether or not the same were fair at the time they were made. The assessment of damages for unpaid taxes and penalties is another question which the successor to Nadina Gustilo as administratrix to the Philippine estate may well wish to pursue against Nadina Gustilo, but the subject should never have been considered as offered by a non-expert, in these proceedings.

APPENDIX 9
(Excerpts from Statement of Facts pp.389-395)

MR. HILL: Nadina Gustilo in her response to motion for partial summary judgment in the heirship proceeding, in denial of the heirship claim of Nadina Gustilo, paragraph 1 stated in clear, unambiguous terms the undisputed fact that -- and then there's paragraph roman numeral one and the title "Undisputed Facts." Item No. 1 under Undisputed Facts is, Nadina G. Gustilo, formerly known as -- . . . It's not an affidavit; it's a pleading [with attached affidavit]. "Nadina G. Gustilo, formerly known as Nadina Gonzaga married Francisco Maravilla Jr., on December 24, 1970, at Queen of Peace Church, a Catholic church in Bacalod City, Philippines."

Two, which is No. 3 in the response to motion for partial summary judgment, "The regional trial court of Negros Occidental, Sixth Judicial Regional Branch LX Cadiz City, Philippines, entered a court order on March 12, 1985, anulling the marriage between Nadina G. Gustilo, formerly known as Nadina Gonzaga and Francisco Maravilla Jr."

The movant respectfully requests the court, in view of the statements made in unambiguous, clear form in a pleading filed in this court by Nadina Gustilo for the purpose of obtaining judicial relief in these proceedings, to judicially admit the facts just stated in the motion. . . .

(Text omitted)

. . . We would ask the Court with respect to such judicial admission made in these proceedings to do the following: one, remove the question as to the marriage of Nadina G. Gustilo, formerly known as Nadina Gonzaga, the question of her marriage to Francisco Maravilla Jr. on December 24, 1970, from the province of the jury as an issue on this case. That there be offered neither evidence in favor of such matter or opposed to it, it being posed as an undisputed fact by Nadina Maravilla -- correction, Nadina Gustilo -- and accepted by the movants in this motion as being an established fact.

With respect to Item No. 2, the movant respectfully asks the Court to take judicial notice again of that recitation as an

undisputed fact in the response to motion for partial summary judgment just identified and remove from the province of the jury any question concerning whether or not an annulment occurred with respect to the marriage between Nadina Gonzaga and Francisco Maravilla Jr., and whether or not that marriage continued during any period of time, but to accept that it is judicially admitted that such marriage was annulled and terminated on March 12, 1985, by the regional trial court, Negros Occidental, for the Sixth Judicial Regional Branch LX, Cadiz City, and that no issue be submitted to the jury on such matter or any evidence permitted in these proceedings for or against such proposition.

Further, movant requests such other and further decisions and rulings by the Court as may be just and right in connection with and which would ordinarily flow from the establishment of the undisputed facts recited by the attorneys for Nadina Gustilo which have been accepted by the movant as being undisputed facts in this case; that it should not be the subject of admission of evidence or any issue which might be submitted to the Court.

That's my motion. We weren't able to obtain stipulations on the matters we asked for yesterday.

. . .

(Text Omitted)

THE COURT: Counsel, I don't think we are going to have a dispute that she got married to this guy in 1970 or that there was a civil annulment in '85.

MR. HILL: That's it. I want those two facts as evidence.

MRS. MEINEKE: They have already put on evidence regarding the 1970 --

THE COURT: I'm not going to prevent them from putting on additional evidence about it.

MR. HILL: Whether there was or wasn't a marriage in '70 or an annulment in '85?

MR. HORRIGAN: It's his burden. The law is clear.

THE COURT: I'm going to deny the motion.

APPENDIX 10

(Excerpts from Tr. 2262-2270: First Amended Motion for Judgment for Jose Vicente Gustilo, III, and Mary Joy Ann Gustilo)

I.

Status of Nadina Gustilo

1. The invalidity of the attempted marriage of Nadina G. Maravilla to Armando C. Gustilo in August of the year 1982 is apparent on the face of the record. The fact of the prior Maravilla marriage and of the civil annulment on March 12, 1985, terminating the marriage to Nadina G. Maravilla to Francisco Maravilla, Jr., may not be disputed and is established in this case as will be made plain below. The Petitioner in that Philippine annulment proceeding of March 12, 1985, was Nadina G. Maravilla. She pled her decree of annulment in this Court as an Exhibit "B" to her Response to Motion for Partial Summary Judgment in Heirship Proceeding and Denial of Heirship Claim of Nadina Gustilo and made at least six deliberate, unequivocal judicial admissions, any one of which is of sufficient gravity as to require issue preclusion regarding her claimed marriage and the continuing impediment of her prior marriage or an instruction against her and judgment against her on the issue of marital status without regard to any contrary jury determination. It is virtually certain that any order of this Court finding that Nadina Gustilo is the surviving spouse of Armando Gustilo will be contrary to both Texas and Philippine law and will cause a large continued wasting of estate assets in unavoidable and necessary measures toward rectification of conflicting decisions.

2. The jury answered Jury Question Number 23 "No". Jury Question Number 23 as answered was a finding against common law or informal marriage in Texas and was a finding against public holding out or cohabitation in Texas. The laws of the Republic of the Philippines and of the State of New Jersey do not provide for but prohibit common law marriages, and no

claim of common law marriage or ratification of prior void marriage was submitted in respect to either of such jurisdictions for that reason. There was no evidence of public holding out in Texas and the issue should have been decided as a matter of law. Jury Question No. 20 inquired solely about a matter concluded by law and should not have been submitted as an issue under the law and the facts of this case either.

3. The record in this case establishes, without dispute, the marriage of Nadina Gonzago to Francisco Maravilla, Jr., on the 24th day of December, 1970, or so she swears (See Plaintiff's Exhibit 783). Also see Exhibit "A" hereto.

4. In an affidavit attached to the aforesaid Response she swore to this Court that she obtained a Civil Annulment on March 12, 1985 (See Exhibit H attached to said Response). It is impossible to read the opinion of her own attorney William A. Veto (See her exhibit D) and the Philippine authority submitted by both sides and find a basis in the evidence for a judgment determining Nadina G. Gustilo to be the surviving spouse.

5. Nadina Gustilo repeated the same assertion, that civil annulment was obtained on March 12, 1985, in her Response to Second Motion for Partial Summary Judgment. Against see attached her own affidavit, Exhibit 1-C, swearing to the fact of the March 12, 1985 annulment and Veto's affidavit, 1-E.

6. Under the title "UNDISPUTED FACTS" in her Response to Motion for Partial Summary Judgment, Denial of Claim of Heirship of Nadina Gustilo; the said Nadina Gustilo has judicially admitted in this case as follows:

> "3) The Regional Trial Court of Negros Occidental, 6th Judicial Region, Branch LX Cadiz City, Philippines entered a Court Order on March 12, 1985 annulling the marriage between Nadina G. Gustilo f/k/a Nadina Gonzaga and Francisco J. Maravilla, Jr." (See her Response to Motion for Partial Summary Judgment In Heirship Proceeding and Denial of Heirship Claim of Nadina Gustilo). She attached the Order of Annulment reflecting that its alleged causes were force and coercion occurring same 14 years prior to the annul-

ment. And this Court gave those documents its full consideration in denying the Motion for Summary Judgment.

7. The date of annulment has been judicially admitted and cannot be denied. Nadina Gustilo's statements in her pleading regarding what she called "UNDISPUTED FACTS", her reassertion of the same statement in a subsequent Response, and her Affidavits accompanied by the decree of annulment as an exhibit to the First Response as all assertions upon which this Court has already relied in denying Movants' relief requested in their Motions for Partial Summary Judgment. They are, therefore, judicial admissions. They are not mere evidence for the jury, but judicial admissions. They prelude all contrary evidence.

8. The Republic of the Philippines Court of Appeals, Manila, Seventh Division (See Plaintiff Exhibit 38) in a proceeding involving the same parties as this proceeding and the same issues made a decision and included in it the following determinations:

(The decision was received in evidence without objection or limitation)

"The civil status of minor child, June Salvacion, and the validity/invalidity or existence of the marriage between Nadina and the deceased cannot be compromised". The Court noted concerning its consideration of the status of June Salvacion that "her birth certificate evidently shows that she is the daughter of private respondent, Nadina and one Francisco Maravilla, Jr., June Salvacion having been born on June 9, 1978 (Annex 2, page 27 records) or almost seven years before her mother's marriage to Maravilla was allegedly annulled. Private respondent claims that her marriage to Maravilla was annulled on March 12, 1985, and that she married the now deceased, Armando C. Gustilo, in August, 1982 or almost three years before her marriage to Maravilla was supposed to have been annulled, in which case her status and that of June Salvacion with respect to the deceased, Gustilo, are highly questionable". (Emphasis by Movants).

. . .

(Text Omitted)

12. The Court also has before it another sworn admission by Nadina Maravilla (now called Gustilo) as follows:

"3. Petitioner is legally married to Francisco J. Maravilla in a marriage which took place at Mary Queen of Peace Church, at Bacolod City, on December 24, 1970; photocopy of the marriage contract is hereto attached as Annex "A" and made an integral part hereof." (From sworn Petition of Nadina Maravilla for Correction of Entries in the Certificate of Birth, Affidavit follows below)

"I, Nadina G. Maravilla, of legal age, Filipino and resident of Bacolod City, Philippines, after having been duly sworn to (sic) in accordance with law do hereby depose and say: "That I am the Petitioner in the above entitled case and have caused the preparation of the foregoing Petition; and that I have read and understood all the contents of the same to be true and correct to the best of my personal knowledge and belief".

IN WITNESS HEREOF, I hereunto set my hand this _____ day of March, 1983, at Makati, Metro Manila,

S/ Nadina G. Maravilla
NADINA G. MARAVILLA

SUBSCRIBED AND SWORN to before me this 17th day of March, 1983, at Makati, Metro Manila, affiant exhibited to me her Res. Cert. No. A-15830730-P issued on March 16, 1983 at Bacolod City, Philippines.

S/ illegible
NOTARY PUBLIC
UNTIL DECEMBER 31, 1983
PTR NO. 0834826

Doc. No. 249
page No. 22
Book No. 42
Series of 1983

(Appellants' Brief, First Point: b, c, d, e, and f [Pages 5-7, Appellants' Brief, Court of Appeals])

FIRST POINT: Error of the Probate Court in not finding against the claims of Nadina (Maravilla) Gustilo . . . to be the surviving spouse and heir of Armando C. Gustilo, Deceased. The evidence conclusively establishes the opposite fact.

. . .

(Text Omitted)

b. Error of the Probate Court in refusing to accept admissions of Nadina Maravilla as being unopposed by any probative evidence and conclusive against her claim to be the surviving widow.

Ref.: Motion to Take Judicial Notice of a Response of Nadina Maravilla (which includes her affidavit) containing judicial admissions with issue-preclusive effect. S.F. 388-393; see also attempted separate offer of affidavit attached to offered Response - S.F. 308-310. Motion of Introduction of Admissions, April 22, 1993, Tr. 2071, and especially Tr. p. 2076 paragraph 3, subparagraph 10 S.F. 407-419 et seq.; Motion for Special Instructions dated, April 16, 1993, Tr. 2254; Motion for a Trial Order, April 15, 1993, Tr. 2950, at p. 2953; Motion in Limine, dated April 16, 1993, Tr. 2051 (overruled in limine request paragraph 14 on p. 2057), denied p. 129-130, Hearing on motions April 5, 1993, see also S.F. 480 for order.

c. Error of the Probate Court in failing to find, as a matter of law, that the Maravilla marriage continued until March 12, 1985, thus rendering void at its inception the second marriage.

Ref.: Same references as b and d.

d. Error of the Probate Court in permitting submission of Jury Question Number 20 over objection of Appellants that affirmative answer to that question was prohibited by judicial admissions and judicially established facts.

Ref.: Same reference as b; Esp. S.F.388-393 S.F. 1701 last two paragraphs through first line 1705.

e. Error of the Probate Court in denying Appellants' Motion for a Directed Verdict Denying Spousal Status and Heirship Claim of Appellee, Nadina (Maravilla) Gustilo. Appellants were entitled to judgment on admitted facts, conclusive evidence and judicially established facts conclusively establishing the opposite of Appellee's claims and there was no probative evidence supporting those claims.

Ref.: S.F.1545 through 1550; S.F. 1612, 1613, 1614.

f. Error of the Probate Court in denying Appellant's First Amended Motion for Judgment, denying spousal status and heirship claims of Appellee, Nadina (Maravilla) Gustilo.

Ref.: Tr.2262 at pages 2262-2278. Judgment at Tr. 2361.

(Excerpt from pages 22-23 of Amended Motion for Rehearing filed in Texas Supreme Court)

2. Nadina's Claims of a Prima Facie Case for a Valid Marriage to Gustilo

The question arises: What elements does Nadina claim she established with some evidence as a basis for her *prima facie* case? In the Republic of the Philippines, New Jersey, and Texas, the first and paramount element is capacity [Article 52, Civil Code of the Philippines, Paras, Ninth Ed., Vol. I, pp.242-43; New Jersey Revised Statutes 37:1-13, New Jersey Statutes Annotated; *Dacunzo v. Edgye*, 117 A.2d 503, New Jersey Supreme Court, Oct. 10, 1955; *Franklin v. Smallridge*, 616 S.W.2d 655 (Tex. Civ. App.--Corpus Christi 1981, no writ); *en banc* decision in *Phillips v. State*, 701 S.W.2d 875 (Tex. Crim. App. 1985, reh'g denied)]. Nadina had waived evidence on the question of her prior and continuing marriage to Maravilla, and Exhibit P73, her testimonial declaration to the same matter, was in evidence. **She was legally and morally barred from any attempt to prove capacity.** She produced no evidence of capacity [*Macadangdang v. Court of Appeals*, 199 Sup. Ct. Reports Ann. 73, (September 12, 1980) at page 84 reflects Philippine accord with Texas law: A marriage license in the Philippines is only evidence of the public act it evidences and is no evidence in respect to recitations of facts by the licensees or applicants.

It was Nadina's burden to prove her own claim to heirship. The void marriage license would have been of some use to her if she also had proved Texas domicile and Texas cohabitation after annulment of the Maravilla marriage. But Nadina failed in this respect and also did not obtain a finding of good faith (and could not have done so under her contrary sworn admissions). She did not establish any "gains" or "partnership of gains". The Spanish Civil Code theory of Caguioa (RNG Appendix 5), if it had not been repealed, still could not apply. The jury expressly found Nadina and Gustilo did not cohabit in Texas (where Gustilo was receiving medical treatment at the time of his death),

making it clear that any partnership of gains or co-ownership, if it ever existed, had terminated as early as her stay in Texas, where cohabitation, if it ever existed, had ceased. Her sole basis for a decision in her favor is her claim to have been **legally** married to Gustilo at the time of his death. This fails under New Jersey and Philippine law.

In an attempt to work a "back door", *ex parte* finding of filiation (and illegitimacy) of her daughter, June Salvacion, **Nadina not only renounced her marriage to Gustilo by claiming a marriage to Maravilla (P. Ex.73), she and her daughter, June Salvacion, solemnly continue to contend that Francisco Maravilla, Jr. and Armando Gustilo joined with them in formally approving the sworn claim of continuing marriage to Maravilla contained in the petition the three adults are claimed to embrace (Ex. P.73). June Salvacion is equally bound by the sworn petition by basing her claim to inheritance upon the resulting order of the court.** Also, by this pleading (Nadina's sworn petition), within seven months following her claimed marriage to Gustilo, she renounced any claim to be an innocent putative wife; for she conclusively demonstrated that she knew she was married to Maravilla at all pertinent times.

. . .

(Text Omitted)

APPENDIX 11

(Excerpt from Statement of Facts, page 1704)

. . .

(Text Omitted)

THE COURT: I understand that the issue that you are requesting me to give the jury instructs the jury to find that Nadina was not legally married to Armando. I am going to refuse that issue ....

. . .

(Text Omitted)

(Excerpt from Statement of Facts, page 395)

. . .

(Text Omitted)

THE COURT: Counsel, I don't think we are going to have a dispute that she got married to this guy in 1970 or that there was a civil annulment in '85.

. . .

(Text Omitted)

(Excerpt from Statement of Facts, page 1632)

. . .

(Text Omitted)

THE COURT: You have shown they got married in '82, an annulment in '85.

MR. HILL: I have shown absolutely authenticated information before this Court, the marriage certificate, her sworn petition saying she is married in Court. I have got also court findings on that issue, and attached to the court findings is the marriage license.

. . .

(Text Omitted)

APPENDIX 12
(Application for Declaration of Heirship filed by Gerardo Gustilo)

No. 214,659

IN RE THE ESTATE OF	§	IN THE PROBATE COURT
	§	
ARMANDO GUSTILO,	§	NUMBER ONE (1) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

APPLICATION FOR DECLARATION OF HEIRSHIP

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Gerardo Gustilo and files this his application for a declaratin of heirship in the above cause, and as ground therefor would respectfully show the following:

I.

The name of the Decedent is Armando C. Gustilo, who died intestate on December 19, 1986, in Houston, Texas.

II.

Applicant is the third cousin of the Decedent. Our grandfathers were first cousins, and we have a common great-great-grandfather, Bonifacio Gustilo.

III.

The names, residences, and interests of the Decedent's heirs, as well as their relaitonship to the Decedent, are as follows:

DECEDENT'S CHILDREN:

Mary Joy Anne Gustilo (a minor)

Born: September 6, 1977 in Fabrica, Negros Occidental, The Philippines.

Residence:
c/o Milagros Barco
6-B Avalon Condominiums
Ortigas Avenue, Greenhills, San Juan, Metro Manila, The Philippines

Relationship to the Decedent:

Daughter. Exhibit "A" hereto is a copy of her birth certificate, which bears the signature of the Decedent, who is named as her father on the face of said document, which is witnessed and authenticated as required by Section 42(b) of the Texas Probate Code.

Jose Vicente Gustilo III

Born: May 28, 1955 in Bacolod City, Negros Occidental, The Philippines.

Residence:

Aslon, Cadiz City, Negros Occidental, The Philippines
mail: c/o Nena Gustilo vda. de Varela
17th Street
Bacolod City, The Philippines

Relationship to the Decedent:

Son. Born to Ninfa Deriada out of wedlock. Acknowledged by Decedent as his son. Exhibit "B" is an affidavit of Decedent's brother and sister stating that Jose Vicente Gustilo III was always recognized by Decedent and by Decedent's relatives as Decedent's son. Exhibit "C" is a statement of the official custodian of the birth records, stating tha tthe birth record of Jose Vicente Gustilto III cannot be produced because same was destroyed in 1974 along with other records of births in Bacolod City for 1955. Exhibit "D" is a notarized legal document signed in october 1986 by Decedent shortly before his death recognizing this child as his son, along with Mary Joy Anne Gustilo and June Salvacion Gustilo. Exhibit "E" is another document signed by the Decedent recognizing this child as his son.

June Salvacion Gonzaga Maravilla

Born: June 9, 1978, in Bacolod City, The Philippines.

Residence:

c/o Nadina Gustilo
10 Marlin Drive
Whippany, New Jersey

Relationship to the Decedent:

Putative daughter. At the time of June's birth, her mother, Nadina Maravilla, was legally married to Francisco Maravilla, who was the father stated on the birth certificate, which is Exhibit "G" hereto. To my knowledge June was never legally adopted by the Decedent, although her mother, years later, succeeded in amending June's bireth certificate so as to make her illegitimate, with Decedent as her father. Decedent recognized June as his child (see Exhibit "D" hereto) but June was the legitimate child of Francisco Maravilla.

DECEDENT'S PUTATIVE WIFE

Nadina Gonzago, a.k.a. Nadina Gustilo and Nadina Maravilla.

Residence:

10 Marlin Drive
Whippany, New Jersey

Relationship to the Decedent:

None. Nadina was a private secretary to Decedent. Decedent, to my knowledge, never introduced her to others as his wife. Nadina, however, was always trying to pass herself off as a wife. She claims to be his wife by virtue of a purported marriage in New Jersey on August 21, 1982, at which time she was legally married to Francisco Maravilla, who was alive at the time of this void marriage. Her marriage to Francisco Maravilla lasted from December 24, 1974 until March 12, 1985. Exhibit "H" hereto is a copy of her sworn pleadings seeking to annul this marriage on grounds of duress. On the mariage certificcate for said 1982 marriage to Decedent, which is Exhibi t"I" hereto, Nadina misrepresented that this prior marriage had already been annulled.

MARRIAGE DURING DECEDENT'S LIFETIME:

Decedent was previoulsy married in the Philipnies to Consuelo Cuaycong. Applicant is not certain when the marriage began, but it ended when she died in a boating accident in the Philipines in 1980. Decedent adopted on child during this marriage, Lizette Gustilo, who also died in the same boating accident. There were no other children born to or adopted by

the Decedent in this marriage (other than the aforementioned illegitimates). Lizette had no children. Decedent was never legally married to anyone other than Consuelo Cuaycong.

DECEDENT'S PARENTS AND GRANDPARENTS:

All of Decedent's ancestors are deceased.

DECEDENT'S BROTHERS AND SISTERS:

Vicente Gustilo, Jr.

Residence:

Bacolod City, The Philippines.

Relationship to the Decedent:

Brother, legitimately born of the same mother and father as Decedent.

Imelda Ramos

Residence:

Cadiz City, The Philippines.

Relationship to Decedent:

Sister, legitimately born of the same mother and father as Decedent.

Nena Gustilo vda. de Varela

Residence:

17th Street
Bacolod City, The Philippines

Relationship to Decedent:

Sister, legitimately born of the same mother and father as Decedent.

A complete genealogy is appended hereto as Exhibit "F".

All children born to or adopted by Decedent have been listed. Each mariage of the Decedent has been listed, with the date of th emarriage, the name of the spouse, adn the date and place of termination thereof.

IV.

Decedent died intestate. Although this estate has been under the administration of Nadina Gustilo for three and one-half

years, neither she nor any party has moved to determine who the heirs of Armando Gustilo are.

V.

An Administratrix has had charge of the assets of this estte for over three years. Applicant does not vouch for the accuracy of her inventory and annual accountings on file in this cause, but has no independent m eans of knowing the property of the estate completely. Applicant is certain that Administratrix has hidden or embezzled large sums.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that the court enter a declaration of heirship, and that he be granted any other and further relief which he may deserve at law or in equity.

Respectfully submitted,

WILMOT McCUTCHEN
Texas Bar No. 13511700
P.O. Box 701129
Houston, Texas 77270
(713) 868-3574

Attorney for Applicant

STATE OF TEXAS §

COUNTY OF HARRIS §

AFFIDAVIT

BEFORE ME, the undersigned authoity, on this day personally appaered GERARDO GUSTILO, who, being by me first duly sworn, upon his oath declared the following:

"My name is GERARDO GUSTILO. I am over the age of eighteen and am in all ways legally competent to make this affidavit. I have red the foregoing Application for Declaration of Heirhsip and all factual statements therein are true in substance and in fact ot the best of my personal knowledge, and no

material fact or circumstance has been omitted from said application. I do not, hwoever, vouch for the accuracy of the third annual accounting submitted by the Adminstratrix.

/S/
GERARDO GUSTILO

Subscribed and sworn to before me this 11th day of April, 1991.

/S/
Notary Public

GINA TYSON
[SEAL] MY COMMISSION EXPIRES
April 1, 1995

CERTIFICATE OF SERVICE

This is to certify that on the 12 day of April, 1991, a true and correct copy of the foregoing was served upon the following counsel of record in this case by hand delivery.

Joseph S. Horrigan
Horrigan & Goehrs
1000 Two Houston Center
909 Fannin
Houston, Texas 77010-1005
Attorney ad Litem for June Gustilo

Ronald R. Niehaus
6363 Woodway, Suite 800
Houston, Texas 77057
Attorney for Nadina Gustilo, Individually and as Administratrix

/S/
WILMOT McCUTCHEN

APPENDIX 13
(Resolution of the Supreme Court for the Republic of the Philippines, Third Division)

Republic of the Philippines
Supreme Court
Manila

Third Division

Gentlemen:

Quoted hereunder, for your information, is a resolution of the Third Division of this Court dated MAR 23 1994.

G.R. No. 111237 (Nadina G. Gustilo, etc., et al vs. Court of Appeals, et al.). The Court deliberated on the motion for reconsideration or modification, dated March 8, 1994, filed by counsel for petitiners of the resolution dated January 26, 1994 which denied the petition for review on certiorari as no reversible error was committed by the appellate court. It appears to the Court that the motion merely reiterates the same arguments earlier raised and does not present any substantial reasons not previously invoked nor any matters not already considered and passed upon by the Court.

ACCORDINGLY, the Court Resolved to *DENY* the motion for reconsideration for lack of merit. This denial is ***FINAL***.

The Court further Resolved to ***NOTE WITHOUT ACTION***:

(a) the motion to admit corrected motion for reconsideration or modification dated March 19, 1994, filed by said counsel for petitioners; and

(b) the aforesaid corrected motion for reconsideration or modification.

Very truly yours,
JULIETA Y. CARREO
Clerk of Court

By:
ALFREDO P. MARASIGAN, JR.
Asst. Div. Clerk of Court
The Judgment Division
Supreme Court, Manila